

## § 21.40

handicapping effects of physical, mental, social and vocational disadvantages, and to effect a realization of the individual's potential.

(Authority: 38 U.S.C. 3115(a))

(6) *Workshop*. This term means a charitable organization or institution, conducted not for profit, but for the purpose of carrying out an organized program of evaluation and rehabilitation for handicapped workers and/or for providing such individuals with remunerative employment and other occupational rehabilitative activity of an educational or therapeutic nature.

(Authority: 38 U.S.C. 3115(a))

(7) *Vocational rehabilitation counselor*. Unless otherwise stated, the term vocational rehabilitation counselor refers to a vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration, Department of Veterans Affairs.

(Authority: 38 U.S.C. 3118(c))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 53 FR 50956, Dec. 19, 1988; 62 FR 17707, Apr. 11, 1997]

### BASIC ENTITLEMENT

#### § 21.40 Basic entitlement.

A veteran or serviceperson shall be entitled to a program of rehabilitation services under 38 U.S.C. chapter 31 if all of the following conditions are met:

(a) *Service-connected disability*. (1) The veteran has a service-connected disability of 20 percent or more which is, or but for the receipt of retired pay would be, compensable under 38 U.S.C. chapter 11, and which was incurred or aggravated in service on or after September 16, 1940; or

(2) A serviceperson is hospitalized for a service-connected disability in a hospital over which the Secretary concerned has charge pending discharge or release from active military, naval or air service and is suffering from a disability which will likely be compensable at a rate of 20 percent or more under 38 U.S.C. Chapter 11; or

(3) A veteran or serviceperson, as described in paragraphs (a)(1) and (2) of this section, has a service-connected

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disability which is compensable or is likely to be compensable at less than 20 percent, if the individual filed an original application for Chapter 31 before November 1, 1990.

(b) *Employment handicap*. The veteran or serviceperson is determined to be in need of rehabilitation to overcome an employment handicap.

(Authority: 38 U.S.C. 3102, Pub. L. 101-508)

[56 FR 15836, Apr. 18, 1991]

### PERIODS OF ELIGIBILITY

#### § 21.41 Basic period of eligibility.

A veteran having basic entitlement may be provided a program of rehabilitative services during the twelve-year period following discharge. The beginning date of the twelve-year period is the day of the veteran's discharge or release from his or her last period of active military, naval, or air service and the ending date is twelve years from the discharge or release date, unless the beginning date is deferred or the ending date is deferred or extended as provided in §§ 21.42, 21.44, and 21.45.

(Authority: 38 U.S.C. 3103)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985]

#### § 21.42 Basic period of eligibility deferred.

The basic twelve-year period of eligibility does not begin to run if the veteran was prevented from beginning or continuing a vocational rehabilitation program for one of the following reasons:

(a) *Qualifying compensable service-connected disability established*. The basic twelve-year period shall not begin to run until the veteran establishes the existence of a compensable service-connected disability described in § 21.40(a). When the veteran establishes the existence of a compensable service-connected disability described in § 21.40(a), the basic twelve-year period begins on the day the Department of Veterans Affairs notifies the veteran of this. The ending date is twelve years from the beginning date.

(Authority: 38 U.S.C. 3103(b)(3), Pub. L. 101-508)